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November 8, 2005

TO: Supervisor Gloria Molina, Chair
              Supervisor Yvonne B. Burke
              Supervisor Zev Yaroslavsky
              Supervisor Don Knabe
              Supervisor Michael D. Antonovich

FROM: J. Tyler McCauley
              Auditor-Controller

SUBJECT: **REVIEW OF ENTERPRISE E-LEARNING SUITE PROCUREMENT PROCESS – BOARD SPECIAL #05-046**

On September 6, 2005, the First and Second Supervisorial Districts requested the Auditor-Controller (A-C) to conduct a comprehensive review of the Enterprise E-Learning Suite procurement process in order to evaluate issues related to the Request For Proposals (RFP) process, and report back to the Board with any findings and recommendations. Specifically, it was requested that the A-C evaluate: (1) the appropriateness of rating an unsolicited proposal after the expiration deadline for submission of proposals and bids; (2) the efficiency and timeliness of multiple departments preparing and executing an RFP through a single RFP process; (3) whether the most cost-effective bidder was selected; and (4) expand on an earlier Board motion regarding the development of a policy to address situations wherein a successful proposer is being merged with or acquired by another firm.

The request also included six specific questions for the departments which were directly involved in the RFP, evaluation and procurement processes. Those questions will be addressed by the involved departments under separate cover.

Summary and Conclusions

Overall, we found the RFP process to be consistent with other such proposal processes that have been used throughout the County. We also found that it is clearly inappropriate to rate unsolicited proposals from potential bidders after a deadline for the submission of proposals has expired, although this was not an issue during this RFP process, inasmuch as Virtual University did not submit a proposal. In addition, we found that for a project of E-Learning's scope (Countywide) and complexity, and to ensure that

the requirements of participating departments were met, it was both reasonable and necessary to include representatives from each end user throughout the RFP process. We also found that the process used to evaluate the proposals was generally consistent with requirements stated in the Internal Services Department (ISD) Services Contracting Manual. Specifically, we found that the evaluation criteria were relevant, reasonable, and applied in an unbiased and consistent manner to all vendors. The evaluation criteria were also appropriately disclosed to the bidders as required.

We found that the overall cost negotiated by the Project Team for Countywide implementation, which includes application hosting, is less than the original bid amount from THINQ, and includes transition of existing THINQ licenses to the newer SABA platform. Based on the evaluation of SABA's E-Learning Suite performed by the Project Team, which we found to be comprehensive, the SABA product appears to be superior in most respects, particularly since it is being offered at the same cost as the originally purchased THINQ product and has the advantage of continuing software development and support. The THINQ product will eventually become obsolete because of the SABA merger, and would otherwise leave the County with an orphan system that may not be compatible with emerging technologies.

In addition, based on ISD estimates, it appears that vendor rather than County hosting will substantially reduce the initial cost of E-Learning Suite implementation, saving approximately $831,000 in the first year and avoiding continuing costs of approximately $286,000 in subsequent years. Furthermore, given the scale of the planned implementation (Countywide) and the fact that participating departments will use the E-Learning Suite for various purposes, there is substantial uncertainty as to what the actual infrastructure and support requirements will be. Therefore, it is reasonable that the County leverage SABA's infrastructure for initial implementation to determine baseline demand for hardware and support.

Although SABA verbally agreed to honor the terms of the agreement the County negotiated with THINQ, SABA did not provide these assurances in writing. We recommended that the Department of Human Resources (DHR) and DHS management obtain written assurances from SABA that they will honor the E-Learning Suite proposal submitted by THINQ, the three-year service and maintenance agreement associated with the 5,000 THINQ licenses already purchased, and the migration of those licenses to the SABA product.

Furthermore, although ISD's avoidable costs were based on estimates, it appears that the negotiated costs and terms agreed to by SABA for initial implementation of an E-Learning Suite are reasonable and the hosting function provided by the vendor will benefit the County since it lowers the County's start-up and ongoing operating and maintenance costs.

Finally, as noted in our review, The CAO, County Counsel and CIO are in the process of developing, for the Board's approval, a policy addressing mergers and acquisitions of

companies that are in the process of bidding and negotiating an Information Technology contract.

We reviewed our report with representatives from DHR, DHS and ISD on November 2, 2005. They generally agreed with our findings and have begun implementing our recommendations. We thank the managers and staff responsible for this RFP for their cooperation and assistance in completing our review.

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Attachment

c: David E. Janssen, Chief Administrative Officer
   Violet Varona-Lukens, Executive Officer, Board of Supervisors
   Michael J. Henry, Director, Department of Human Resources
   Dave Lambertson, Director, Internal Services Department
   Jonathan Fielding, MD, Director of Public Health and Health Officer
   Jon Fullinwider, Chief Information Officer
   Audit Committee
   Public Information Office

Department of Human Resources
Review of Enterprise E-Learning Suite Procurement Process

Background

On February 28, 2002, the Centers for Disease Control and Prevention (CDC) awarded supplemental grant funding to the Department of Health Services, Public Health Program (DHS) to support public health preparedness and incident response to bioterrorism threats by implementing a Learning Management System (LMS) to record, manage and report training information, and also to serve as a gateway to on-line training. CDC's grant terms stipulate that project funds must be encumbered within one fiscal year, and spent by the end of CDC's second fiscal year, requiring an August 30, 2004 implementation date for the LMS.

In December 2002, the Department of Human Resources (DHR) began pursuing the development of an LMS and web-based learning system as part of the County's Strategic Plan. On May 21, 2003, DHR, in partnership with the Chief Information Office (CIO), surveyed County departments to determine their interest in an LMS and invited knowledgeable individuals to participate as members of a Project Team in developing specifications and the selection of an LMS for Countywide use.

In August 2003, DHS asked the Internal Services Department (ISD) to oversee the process of selecting and procuring an LMS to meet CDC's grant funding requirements. During the same period, DHR learned about DHS' LMS project from the CIO. Ultimately, 12 County departments formed an LMS Functional Requirements Working Team (Project Team) to pursue a Countywide LMS solution. During the specification development phase, the Project Team determined that an LMS only comprised one portion of a more comprehensive solution known as an E-Learning Suite, and the project scope and name were changed accordingly.

In February 2004, ISD issued RFP No. 214498 for Comprehensive E-Learning Suite Software and Services, and in June 2004, THINQ Learning Solutions (THINQ) was selected as the County standard. To meet DHS' Bioterrorism grant funding deadline, ISD issued a purchase order to acquire 5,000 licenses for DHS in June 2004, which were installed by the August 30, 2004 deadline.

In May 2005, THINQ was acquired by SABA in a corporate merger. SABA subsequently informed the County that they would only continue to support existing installations of the THINQ product purchased by the County for two years, and would not develop or deploy future versions. To address County concerns regarding software obsolescence and the availability of future support, SABA offered to upgrade the County's existing software licenses and convert all current users to the SABA product.

SABA's E-Learning software was then evaluated using the same matrix and criteria as was applied to the THINQ product, and was found to be superior in functionality and interface. SABA management verbally agreed to meet the contract terms negotiated by THINQ. To fund the E-Learning Suite, the CIO submitted a request for $1,403,120 in Information Technology Funds (ITF) to the Board for approval on August 2, 2005.

Scope

The purpose of our review was to evaluate four specific issues: (1) the appropriateness of rating an unsolicited proposal after the expiration deadline for submission of proposals and bids; (2) the efficiency and timeliness of multiple departments preparing and executing an RFP through a single RFP process; (3) whether the most cost-effective bidder was selected; and (4) expand on an earlier Board motion regarding the development of a policy to address situations wherein a successful proposer is being merged with or acquired by another firm. In addition, we were requested to conduct a comprehensive review of the RFP and procurement processes for the County's Enterprise E-Learning Suite to ensure that the process was objective and consistent with applicable policies, and to review the overall effectiveness of the terms and conditions negotiated as part of the proposed purchase. To determine whether the RFP and bid evaluation processes were consistent with County policy and provided an objective basis for evaluation, staff from the A-C's Office of County Investigations (OCI) reviewed the rating instruments and associated criteria used in this evaluation. OCI staff also consulted with County Counsel and ISD procurement staff and recalculated scores awarded by the evaluation team for a sample of individual bids to determine their accuracy.

OCI staff also examined the RFP and associated amendments and reviewed correspondence from bidders to determine whether minimum mandatory requirements were clearly stated, and if questions were appropriately addressed by the Project Team. Lastly, OCI interviewed DHS, DHR and ISD managers and staff responsible for various aspects of the RFP and bid evaluation processes.

Findings and Conclusions

RFP Process

Sections 4.1.1 and 4.3 of the ISD Contracting Manual specify that an RFP must describe the scope of services required, and disclose both the selection process and evaluation criteria to bidders. In addition, the evaluation process and rating criteria should conform to the RFP service requirements and be designed as objectively as possible to measure a proposal's compliance with the rating criteria.

The evaluation process for this RFP consisted of three phases:

- Phase I was an evaluation of each proposal to determine whether they included the required documents/information, and whether each proposer met 32 pass/fail criteria in the RFP. Failure to meet phase one requirements automatically disqualified proposers from further consideration.

- Phase II consisted of an evaluation, completed by a committee of 11 individuals representing six departments, to score the contents of each proposal based on how each application addressed specific criteria described in the RFP. Each qualifying proposer was awarded a consensus score based on this evaluation.

- Phase III consisted of a product demonstration/evaluation and oral presentations by the highest scoring proposers from Phase II. These proposers were then asked to demonstrate their respective products, based on a detailed matrix of performance expectations and functionality developed by the evaluation committee. This evaluation was designed to mimic, in a test environment, many of the fundamental and necessary transactions and functionality that would be required of a production E-Learning system operating within the County's information technology infrastructure.

Overall, we found the RFP process to be consistent with other proposal processes that have been used throughout the County. The committee responsible for developing this RFP appropriately obtained input from stakeholders during the development process, including from several client departments and ISD, and we found the resulting technical requirements to be reasonable. We also found that the process used to evaluate the proposals was generally consistent with the ISD Services Contracting Manual. Specifically, we found that the evaluation criteria were generally relevant, reasonable, and applied in an unbiased and consistent manner to all proposals. The evaluation criteria were also appropriately disclosed to the bidders, as required.

Specific Issues

Issue 1

Evaluate the appropriateness of rating an unsolicited proposal from a potential vendor after the deadline for submission of proposals and bids had expired.

Finding

Virtual University System (VUS), also known as Digital Learning Management Corporation, did not participate in the formal RFP process. After the March 11, 2004, deadline for the submission of proposals had expired, VUS management initiated contact with the County to market their LMS. VUS twice demonstrated their product; the first demonstration was conducted in conjunction with a demonstration of an Information Technology Online Security Course; and the second was a demonstration structured to mirror the product demonstrations performed in March 2004 by the proposers to the initial E-Learning Suite RFP. Selected members of the Project Team compared VUS' system with THINQ'S system and determined VUS' product was inadequate for Countywide deployment.

According to ISD purchasing staff, meeting with vendors offering similar or comparable commodities and services after a solicitation has been completed is not unusual or inappropriate, particularly when the commodities are subject to rapidly changing technologies such as computer hardware and software, and often occurs as a courtesy to the vendor. In addition, we found no evidence that ISD purchasing staff reopened or solicited additional proposals from vendors, including VUS.

Since the introduction of an E-Learning Suite had Countywide implications, the Project Team members interviewed by us stated that they believed it was in the best interest of

the County for members of the Project Team to meet with Virtual University's management to satisfy themselves that a potentially superior system had not been overlooked. Some individuals also told us they met with VUS at the request of the CIO.

Conclusion

While it is clearly inappropriate to rate unsolicited proposals from a potential vendor after a deadline for the submission of proposals has expired, this was not an issue during this RFP process, inasmuch as VUS did not submit a proposal. The fact that they failed to comply with the RFP requirements (submitting a timely proposal) appropriately excluded them from consideration. In addition, there is no indication that members of the Project Team acted inappropriately by meeting with VUS representatives or informally reviewing their LMS since the Project Team's review was not held-out to constitute part of the official RFP or selection process. Such informal meetings with vendor representatives are not unusual and keep County managers informed about new products and technologies.

Issue 2

Determine the efficiency and timeliness of preparing and executing the RFP with the involvement of multiple departments, e.g. DHR, DHS, ISD, and CIO, through a single RFP process.

Finding

In an attempt to determine the efficiency and timeliness of multiple departments participating in this RFP process, we interviewed members from the Project Team, reviewed documents related to this RFP process, and project timelines indicating the various milestones in the specification and RFP phases. We noted that the entire process spanned a 32 month period; beginning in December 2002, when DHR began pursuing a Countywide LMS as part of the County's Strategic Plan, to August 2, 2005, when the CIO requested the Board to approve $1.4 million in ITF funds.

We noted that 18 months elapsed from the project's inception to DHS' initial purchase of 5,000 licenses in June 2004. During this phase, since each participating department had different needs/uses for the proposed system, it was necessary to form a Project Team with members from multiple departments who would employ a methodical and comprehensive process to ensure the acquisition of the most appropriate E-Learning system for Countywide implementation by:

- Developing criteria to ensure Countywide system compatibility and performance.

- Identifying the participating departments' needs and specifying system requirements based on those needs.

- Identifying and researching the industry leaders.

- Evaluating the various systems through interviews, product demonstrations, and the formal RFP evaluation process.

However, during DHS's deployment of THINQ's system in the fall/winter of 2004, DHS began to experience technical difficulties, which resulted in delaying implementation of the system by approximately four months. In addition, in early 2005, THINQ representatives notified the Project Team that SABA was acquiring THINQ and that SABA would only support the THINQ software for two years. The delays created by LMS technical difficulties, notification of SABA's acquisition of THINQ, additional product demonstrations and evaluation of the SABA software, and negotiations with SABA effectively halted DHS' deployment of the E-Learning Suite.

Conclusion

For a project of E-Learning's scope (Countywide) and complexity, it is important that the needs of each department are addressed, and to perform a thorough analysis and review of functional and technical requirements prior to formulating an RFP. Consequently, it was necessary to include representatives from each end user throughout the RFP process. Although, there were some unanticipated delays when DHS experienced technical difficulties during the initial deployment of THINQ's E-Learning system, and as a result of SABA's acquisition of THINQ, we believe the overall 32 month timeframe, and specifically the 14 month period between the initial license purchase and the CIO's request to the Board for ITF funds, was both prudent and reasonable.

Issue 3

Determine whether the most cost-effective bidder was selected, taking into account subsequent maintenance, operation and training costs.

Finding

We reviewed bid packages, cost estimates, and related documents and data submitted by each of the four qualifying bidders. We also examined rating instruments and criteria used to evaluate the proposals, and reviewed the LMS/E-Learning Suite planning, specification and RFP process. In addition, we interviewed managers from ISD, DHR and DHS who were responsible for the evaluation of proposals, product selection, and procurement and implementation of the E-Learning Suite.

According to Project Overview documents prepared by ISD, THINQ received the highest overall point score, which was based on five factors: Corporate Experience and Capabilities (10%), Approach and Discussion of the Statement of Work (30%), Functional and Technical Requirements (30%), References (5%), and Cost (25%). The RFP requested bids for two implementation scenarios – 5,000 licenses, and Countywide implementation, with the County assuming responsibility for hosting the application and providing the hardware and corresponding personnel in both scenarios. Although, for the cost component, THINQ was the second lowest bidder for the 5,000 licenses and

the second highest bidder for the Countywide application, THINQ had the highest evaluated software to meet the County's needs.

After the initial purchase order was issued to THINQ for the initial 5,000 licenses, the Project Team's Steering Committee addressed the costs associated with hosting the E-Learning Suite Countywide. As a result, the County renegotiated the terms of THINQ's original bid, including having THINQ host most components of the E-Learning Suite. The following table summarizes the results of that negotiation.

ITEM DESCRIPTION	ORIGINAL BID	AFTER NEGOTIATIONS
LICENSES – COUNTYWIDE FOR CORE SYSTEM	$1,250,000	$727,000
LICENSES FOR CENTRAL VIRTUAL CLASSROOM (25 CONCURRENT USERS/SEATS*)	575,000	57,500 [1]
*IN ADDITION TO THE 25 SEATS INITIALLY PURCHASED BY DHS		
CENTRA – VIRTUAL CLASSROOM LCMS	32,775	0
CENTRA – AUTHORING TOOLS	8,050	0
CENTRA – MAINTENANCE	124,476	0
SOFTWARE MAINTENANCE (3 YRS) AND LMS ADAPTER (API TOOLKIT)	256,555	53,970
PROFESSIONAL SERVICES AND TRAINING	373,000	304,650
HOSTING OF APPLICATION	NOT REQUESTED	260,000
TOTAL	**$2,619,856**	**$1,403,120**

[1] The cost of the Centra Virtual Classroom was not negotiated from $575,000 to $57,500. Rather, this change represents a reduction in the initial number of concurrent users from the quantity originally requested for the Countywide implementation.

Conclusion

To the extent that the renegotiated cost, which included vendor hosting, resulted in a lower cost to the County, it appears that the Project Team negotiated effective terms and conditions with THINQ (later SABA). However, because the hosting requirement was not included as a deliverable until after THINQ was awarded the purchase order, there was no comparable pricing information provided by other bidders, which made it impossible to compare costs.

Issue 4

Determine the overall effectiveness of the terms and conditions negotiated as part of the proposed contract with THINQ (now SABA) under this Board letter.

Finding

The money requested from the Information Technology Fund (ITF) totaling $1.4 million is for "Perpetual prepaid Licenses," which are licenses purchased and owned by the County. The ITF money is expected to cover the cost of the initial roll-out of the E-Learning Suite including software licenses and first year maintenance and hosting. Maintenance and hosting costs for the second and third years would be allocated among user departments based on budgeted positions.

Based on cost estimates provided by ISD, it appears that the vendor hosting will substantially reduce the initial cost of E-Learning Suite implementation, saving approximately $836,000 in the first year and avoiding continuing costs of $286,000 per year in subsequent years. Given the scale of the planned implementation (Countywide) and the fact that participating departments will use the E-Learning Suite for various purposes based on the composition of their workforce and strategic training objectives, there is some uncertainty as to what the actual infrastructure and support requirements will be. Therefore, it is reasonable that the County decided to leverage THINQ's infrastructure for initial implementation to establish a baseline demand for hardware and support.

After SABA acquired THINQ in May of 2005, they verbally agreed to the terms and conditions the County negotiated with THINQ. The Project Team subsequently performed an extensive evaluation of SABA's E-Learning Suite. Based on their evaluation, it appears that the SABA product is superior to the THINQ product in most respects and represents a better value for the County since it has the advantage of continuing software development and support. Since SABA intends to discontinue support of The THINQ product after two years, it will eventually become obsolete, leaving the County with an orphan system that may not be compatible with emerging technologies. However, it should be noted that SABA intends to upgrade the 5,000 THINQ licenses to their software.

During our review, we requested ISD provide documentation to support their estimated avoidable personnel and hardware costs. However, purchasing staff indicated that their avoidable costs were estimates based on other projects they have hosted, rather than actual costs for this project, since there is uncertainty as to what actual costs will be.

Conclusion

Although ISD's avoidable costs were based on estimates, it appears that the negotiated costs and terms agreed to by SABA for initial implementation of an E-Learning Suite are reasonable and the hosting function provided by the vendor will benefit the County since it lowers the County's start-up and ongoing operating and maintenance costs.

Issue 5

Expand on Supervisor Molina's related earlier motion for recommendations on developing a policy to address situations wherein a successful proposer is being recommended for final approval by the Board and the recommended proposer has been merged into a successor entity.

Finding

On July 19, 2005, the Board directed the CAO, County Counsel, and the CIO to report back within 60 days with a policy for evaluating companies that are in the process of bidding and negotiating an Information Technology contract, which are being merged with or acquired by another firm. According to their October 14, 2005 status report to the Board, they anticipate submitting a proposed policy for the Board's approval in

November 2005. CAO management informed us that a "holistic" approach to the Board's directive was being pursued, which will include both a pre- and post-contract policy. However, we could not obtain any specifics as to the policy proposal since it was still being formulated at the time of this report.

In the RFP process at issue here, the winning proposer (THINQ) was subsequently acquired by SABA in a corporate merger. To determine whether there were any existing policies or procedures to address mergers and acquisitions (M & A) of existing or prospective vendors, and if such policies were applied in this case, we interviewed managers and staff from DHR, DHS, CIO, and ISD and reviewed relevant documents.

According to purchasing staff at ISD, vendor M & A's are not uncommon, and the typical procedure is to obtain a written agreement from the successor entity wherein the company agrees to meet the existing and/or proposed terms as previously negotiated and agreed with the County. However, in this instance SABA has not provided written assurances that they will honor the terms and conditions negotiated with THINQ, and the upgrading of DHS' 5,000 software licenses. ISD management stated that it was unnecessary to receive written assurances from SABA honoring the agreed upon terms in THINQ's proposal since they would be enumerated in a written purchase order requiring a signed acceptance by SABA.

Conclusion

The CAO, County Counsel and CIO are in the process of developing, for the Board's approval, a policy addressing mergers and acquisitions of companies that are in the process of bidding and negotiating an Information Technology contract.

We recommended to DHR and DHS management that they obtain written assurances from SABA that they will honor the agreed upon terms and conditions negotiated after SABA's acquisition of THINQ.